STATE OF NEW YORK

8369

2023-2024 Regular Sessions

IN ASSEMBLY

December 13, 2023

Introduced by M. of A. CUNNINGHAM -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the use of external consumer data and information sources being used when determining insurance rates

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 2403-a to read as follows:

§ 2403-a. Insurers' use of external consumer data and information sources; prohibited. (a) No insurer shall:

(1) Unfairly discriminate based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression; or

(2) Pursuant to rules adopted by the superintendent, use any external consumer data and information sources, as well as any algorithms or predictive models that use external consumer data and information sources, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression.

(b) (1) The superintendent shall adopt any rules or regulations necessary for the implementation of this section.

(2) The superintendent shall engage in a stakeholder process prior to the adoption of rules or regulations for any type of insurance that includes carriers, producers, consumer representatives, and other interested parties. The superintendent shall hold stakeholder meetings for stakeholders of different types of insurance to ensure sufficient opportunity to consider factors and processes relevant to each type of insurance. The superintendent shall provide notice of stakeholder meetings on the department's website, and such stakeholder meetings shall be open to the public.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(c) (1) After the stakeholder process described in subsection (b) of this section, the superintendent shall adopt rules or regulations for specific types of insurance, by insurance practice, which rules establish means by which an insurer may demonstrate, to the extent practicable, that it has tested whether its use of external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression.

(2) Rules and regulations adopted pursuant to this section shall require each insurer to:

(i) provide information to the superintendent concerning the external consumer data and information sources used by the insurer in the development and implementation of algorithms and predictive models for a particular type of insurance and insurance practice;

(ii) provide an explanation of the manner in which the insurer uses external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, for the particular type of insurance and insurance practice;

(iii) establish and maintain a risk management framework or similar processes or procedures that are reasonably designed to determine, to the extent practicable, whether the insurer's use of external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression;

(iv) provide an assessment of the results of the risk management framework or similar processes or procedures and actions taken to minimize the risk of unfair discrimination, including ongoing monitoring; and

(v) provide an attestation by one or more officers that the insurer has implemented the risk management framework or similar processes or procedures appropriately on a continuous basis.

(3) The rules and regulations adopted by the superintendent pursuant to this section shall include provisions establishing:

(i) a reasonable period of time for insurers to remedy any unfairly discriminatory impact in an algorithm or predictive model; and

(ii) the ability of insurers to use external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, that have been previously assessed by the department and found not to be unfairly discriminatory.

(d) Documents, materials, and other information in the possession or control of the department that are obtained by, created by, or disclosed to the superintendent or any other person pursuant to this section or any rules or regulations adopted pursuant to this section are recognized as proprietary and containing trade secrets. All such documents, materials, and other information are confidential and privileged; are not subject to disclosure under article six of the public officers law, or other open records, freedom of information, sunshine, or similar law of this state; are not subject to subpoena; and are not subject to discovery or admissible in evidence in any private civil action. However, the superintendent may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the superintendent's official duties. The superintendent shall not otherwise

make the documents, materials, or other information public without the prior written consent of the insurer from which the documents, materials, or other information was obtained. The superintendent may make data publicly available in an aggregated or de-identified format in a manner deemed appropriate.

(e) The superintendent may examine and investigate an insurer's use of an external consumer data and information source, algorithm, or predictive model in any insurance practice. Insurers shall cooperate with the superintendent and department in any examination or investigation under this section.

(f) The superintendent shall annually submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly and the insurance chairs of the senate and assembly committees. Such report shall include, but not be limited to:

(1) Information concerning any changes in insurance rates that have resulted from the prohibitions described in subsection (a) of this section;

(2) A summary of the stakeholder engagement process described in paragraph two of subsection (b) of this section; and

(3) A description of data sources, if any, discussed during the stakeholder engagement process, which data sources insurers may use to comply with this section.

(g) Notwithstanding any provision of this section to the contrary, this section does not apply to:

(1) Title insurance, pursuant to article sixty-four of this chapter;

(2) Bonds executed by qualified surety; or

(3) Insurers issuing commercial insurance policies; except that this section shall apply to insurers that issue business owners' policies or commercial general liability policies, which business owners' policies or commercial general liability policies have annual premiums of ten thousand dollars or less.

(h) Nothing in this section:

(1) Requires an insurer to collect from an applicant or policyholder the race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression of an individual; or

(2) May be construed to:

(i) prohibit the use of, or require life, annuity, long-term care, or disability insurers to test medical, family history, occupational, disability, or behavioral information related to a specific individual, which information, based on actuarially sound principles, has a direct relationship to mortality, morbidity, or longevity risk unless such information is otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources;

(ii) prohibit the use of, or require life, annuity, long-term care, or disability insurers to test traditional underwriting factors being used for the exclusive purpose of determining insurable interest or eligibility for coverage unless such factors are otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources; or

(iii) prohibit the use of or require the testing of longstanding and well-established common industry practices in settling claims or traditional underwriting practices unless such practices or factors are

otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources.

(i) As used in this section, unless the context otherwise requires:

(1) "Algorithm" means a computational or machine learning process that informs human decision making in insurance practices.

(2) (i) "External consumer data and information source" means a data or an information source that is used by an insurer to supplement traditional underwriting or other insurance practices or to establish lifestyle indicators that are used in insurance practices. "External consumer data and information source" includes credit scores, social media habits, locations, purchasing habits, home ownership, educational attainment, occupation, licensures, civil judgments, and court records.

(ii) The superintendent may promulgate rules and regulations to further define "external consumer data and information source" for particular lines of insurance and insurance practices.

(3) "Insurance practice" means marketing, underwriting, pricing, utilization management, reimbursement methodologies, and claims management in the transaction of insurance.

(4) "Predictive model" means a process of using mathematical and computational methods that examine current and historical data sets for underlying patterns and calculate the probability of an outcome.

(5) "Unfairly discriminate" and "unfair discrimination" include the use of one or more external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, that have a correlation to race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression, and that use results in a disproportionately negative outcome for such classification or classifications, which negative outcome exceeds the reasonable correlation to the underlying insurance practice, including losses and costs for underwriting.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.